



CITY COUNCIL AGENDA REPORT

MEETING DATE: MAY 1, 2007

ITEM NUMBER:

**SUBJECT: IMPLEMENTATION OF MILLS ACT AND
HISTORIC RESOURCE PRESERVATION AGREEMENT
FOR THE HUSCROFT HOUSE – 546 BERNARD STREET**

DATE: APRIL 18, 2007

FROM: DEVELOPMENT SERVICES DEPARTMENT/PLANNING DIVISION

PRESENTATION BY: WILLA BOUWENS-KILLEEN, AICP, PRINCIPAL PLANNER

**FOR FURTHER INFORMATION CONTACT: WILLA BOUWENS-KILLEEN, AICP
PRINCIPAL PLANNER
(714) 754-5153**

RECOMMENDATION:

1. Adopt the resolution authorizing implementation of the Mills Act in the City of Costa Mesa; and
2. Adopt the resolution, including the attached draft historic resource preservation agreement, which allows the City to enter into a contract with the property owner of the Huscroft House.

BACKGROUND:

On March 6, 2007, City Council directed Planning staff to prepare a resolution, authorizing implementation of the Mills Act and placing the Huscroft House on the City's historic register. Planning staff is now returning with the necessary resolutions to allow the implementation of the Mills Act and for the City of Costa Mesa to enter into a Mills Act contract with the property owner of the Huscroft House.

ANALYSIS:

Implementation of the Mills Act would allow the City to enter into a Mills Act contract with the property owner. The contract is initially approved for a 10-year period and is automatically renewed every year, with no limit, unless terminated. (The contract specifies under what circumstances the contract could be terminated.) While under contract, the property owner would be prohibited from making changes to the structure that would destroy or alter the historic resources and/or its qualities and features. Additionally, the property would be subject to maintenance standards to ensure the historic resource, including the surrounding grounds, remain in good condition.

In exchange for the limitations called out in the contract, the property owner may qualify for relief from property taxes that would be allocated to the City. State law details how this formula is calculated; the owner must work with the County Assessor's office to confirm they qualify and how much of a reduction would be allowed. This reduction is

applicable only to the historic resource; in this case, the Huscroft House. It would not be applicable to the 3 residences behind the Huscroft House although located on the same property.

Adoption of the resolution implementing the Mills Act is consistent with the City's General Plan Goal HCR-1A.4, which seeks adoption of incentives such as the Mills act to encourage the preservation of significant historic resources.

ALTERNATIVES CONSIDERED:

Adoption of the resolution will allow the City to enter into Mills Act contracts with qualifying property owners as a means to encourage rehabilitation and maintenance of historic resources.

If City Council decides not to adopt the enabling resolution, the benefits of the Mills Act could not be offered to owners of historic resources and the owner could request that the Huscroft House be removed from the City's list of historic resources.

FISCAL REVIEW:

The Finance Department reviewed the document. Approval of the Mills Act will reduce the City's annual tax revenues in proportion to the assessed value on the property. The City currently receives approximately 11% of each property tax dollar. Based upon the approximate market value of the Huscroft House property of \$1.1 million, the City will lose about \$1,210 in tax revenue in the first year following adoption of the resolution. This tax loss will increase each year in proportion to increases in the property's value.

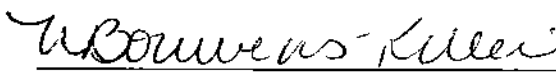
Expansion of the Mills Act to other properties in Costa Mesa will result in additional losses of property tax revenues to the City in proportion to the taxable assessed value for such properties.

LEGAL REVIEW:

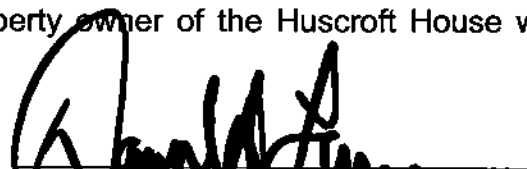
Legal reviewed the resolutions and contract and approved them as to form.

CONCLUSION:

Adoption of the resolution will allow the City to enter into a Mills Act contract with any owner of a listed historic resource. The Mills Act is listed in the City's General Plan as a possible incentive to encourage the rehabilitation, restoration, and maintenance of historic resources in the City. Adoption of the second resolution would allow the City to enter into a Mills Act contract with the property owner of the Huscroft House which, ultimately will protect this historic resource.


WILLA BOUWENS-KILLEEN, AICP
Principal Planner


MARC R. PUCKETT
Director of Finance


DONALD D. LAMM, AICP
Deputy City Mgr./Dev. Svs. Director

DISTRIBUTION: City Manager
Assistant City Manager
City Attorney
Deputy City Manager – Development Svs. Dir.
Public Services Director
City Clerk (2)
Staff (4)
File (2)

John Morehart
126 Properties, LLC
126 E. 16th Street
Costa Mesa, CA 92627

ATTACHMENTS: Exhibit "A" – Draft resolution for Mills Act implementation
Exhibit "B" – Draft resolution and Draft Historic Preservation Agreement

File Name: 050107MillsAct	Date: 041907	Time: 9:00 a.m.
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Exhibit “A”

Draft Resolution for Mills Act Implementation

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, AUTHORIZING THE IMPLEMENTATION OF THE MILLS ACT IN THE CITY OF COSTA MESA.

THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY RESOLVE AS FOLLOWS:

Section 1:

WHEREAS, the Mills Act, Government Code Section 50280 et seq., provides cities with the opportunity to contract with property owners of qualified historical resources whereby the owner promises to preserve, restore, and rehabilitate the property in return for a reduced property tax assessment; and

WHEREAS, the City desires to encourage the protection of historic resources in the city for current and future generations; and

WHEREAS, the Mills Act will also have beneficial effects on City businesses, economic stability and community pride by preserving important historic resources; and

WHEREAS, the use of the Mills Act will fulfill the City's General Plan goals, calling for the promotion and preservation of significant historic resources by developing and implementing such incentives as the Mills Act; and

WHEREAS, property owners, in consideration for abiding by the terms of the Agreement, shall be entitled to a reassessment of valuation of the historic resource and any corresponding reduction in property taxes pursuant to the provisions of the California Revenue and Taxation Code; and

WHEREAS, it is the City's expectation that property owners will use the property tax savings accrued under this Agreement to fund the rehabilitation and preservation of historic resources, to compensate owners for past improvements to historic resources, and to ensure historic resources continue to be maintained in an architecturally consistent manner.

Section 2: The program implementing California Government Code, Article 12, Section 50280 et seq. for the purpose of preserving, rehabilitating, and maintaining designated historic resources, shall be known as the Mills Act.

Section 3: The City Council hereby delegates to the Deputy City Manager/Development Services Director or his/her designee, the authority and responsibility to develop and maintain an application for properties seeking qualification and participation in the Mills Act, as well as the authority and responsibility to review and make a recommendation to the City Council on any application submitted pursuant to the Mills Act. The City Council is the final authority on the authorization and approval of the Mills Act.

Section 4: The City Council hereby delegates to the Deputy City Manager/Development Services Director or his/her designee, the authority and responsibility to coordinate, process, and execute each Historic Property Preservation Agreement following approval of the Agreement by City Council resolution.

PASSED AND ADOPTED this 1st day of May, 2007.

Allan Mansoor, Mayor of the City of Costa Mesa

ATTEST:

APPROVED AS TO FORM:

City Clerk of the City of Costa Mesa

City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE)ss
CITY OF COSTA MESA)

I, Julie Folcik, City Clerk, and ex-officio Clerk of the City Council of the City of Costa Mesa, do hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the said City Council at a regular meeting thereof held on the 1st day of May, 2007:

City Clerk and ex-officio Clerk of the
City Council of the City of Costa Mesa

EXHIBIT “B”

Draft resolution and Draft Historic Preservation Agreement

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, APPROVING THE DRAFT HISTORIC PRESERVATION AGREEMENT TO ALLOW IMPLEMENTATION OF THE MILLS ACT FOR 546 BERNARD STREET IN THE CITY OF COSTA MESA.

THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY RESOLVE AS FOLLOWS:

WHEREAS, the Mills Act, Government Code Section 50280 et seq. provides cities with the opportunity to contract with owners of qualified historical resources whereby the owner promises to preserve, restore and rehabilitate the property in return for a reduced property tax assessment; and

WHEREAS, the City is dedicated to the protection and stabilization of property values through maintaining and upgrading its older housing stock, through the use of incentives such as the Mills Act; and

WHEREAS, the Mills Act will also have beneficial effects on City businesses, economic stability and community pride by preserving important neighborhood resources; and

WHEREAS, the use of the Mills Act will fulfill one of the City's General Plan goals, calling for the promotion and preservation of significant historic resources; and

WHEREAS, it is the City's expectation that Property Owner will use the property tax savings accrued under this agreement to compensate for past and future improvements to the property.

WHEREAS, Owner possesses fee title in and to that certain qualified real property together with associated structures and improvements thereon, located at 546 Bernard Street, Costa Mesa, California, (hereinafter referred to as "Historic Resource"); and

WHEREAS, the Historic Resource is a qualified historical property under the Mills Act in that it is privately owned property which is not exempt from property taxation and is listed on the City of Costa Mesa's Historic Resource list; and

WHEREAS, Owner, in consideration for abiding by the terms of this Agreement shall be entitled to a reassessment of valuation of the Historic Resource and any corresponding reduction in property taxes pursuant to the provisions of the California Revenue and Taxation Code; and

WHEREAS, the City and Owner for their mutual benefit, now desire to enter into this Agreement to limit the use of the Historic Resource to prevent inappropriate alterations, to ensure that characteristics of historical significance are preserved and maintained in an exemplary manner, and to carry out the purposes of Article 12 (commencing with Section 50280) of Chapter 1, Part 1, Division 1 of Title 5 of the California Government Code and Article 1.9 (commencing with Section 439) of Chapter

3, Part 2 of Division 1 of the California Revenue and Taxation Code.

NOW, THEREFORE, City Council hereby directs staff to enter into the attached Historic Preservation Agreement with the Property Owner of 546 Bernard Street, Costa Mesa.

PASSED AND ADOPTED this 1st day of May, 2007.

Allan Mansoor, Mayor of the City of Costa Mesa

ATTEST:

APPROVED AS TO FORM:

City Clerk of the City of Costa Mesa

City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE)ss
CITY OF COSTA MESA)

I, Julie Folcik, City Clerk, and ex-officio Clerk of the City Council of the City of Costa Mesa, do hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the said City Council at a regular meeting thereof held on the 1st day of May, 2007:

City Clerk and ex-officio Clerk of the
City Council of the City of Costa Mesa

When recorded mail to:
City of Costa Mesa
Planning Division
Post Office Box 1200
Costa Mesa CA 92628-1200

HISTORIC RESOURCE PRESERVATION AGREEMENT (MILLS ACT CONTRACT)

THIS AGREEMENT is made and entered into this ____ day of _____, 2007, by and between the City of Costa Mesa ("City"), a municipal corporation of the State of California, and _____ ("Owner").

1. **AGREEMENT SUBJECT TO GOVERNMENT CODE SECTIONS 50280-50290.** This Agreement is made pursuant to California Government Code Sections 50280 through 50290 and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code and is subject to all of the provisions of those statutes.
2. **ASSESSMENT OF VALUATION.** Property tax relief afforded to Owner pursuant to Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code will be determined solely by the Orange County Assessor. City makes no representations regarding the actual tax savings any person may realize by entering into this Agreement.
3. **PRESERVATION OF PROPERTY.** Owner agrees to preserve, maintain, restore and/or rehabilitate the Historic Resource and its character defining features. Character defining features include, but are not necessarily limited to, the general architectural form, style, materials, design, scale, details, mass, roof line, and other aspects of the appearance of the exterior of the Historic Resource.

The Secretary of the Interior's Standards and Guidelines for Rehabilitation (Exhibit "B") and minimum maintenance standards (Exhibit "C"), attached hereto and incorporated herein by reference, shall constitute the minimum standards and conditions for preservation, restoration, rehabilitation of the Historic Resource, and shall apply to the Historic Resource throughout the term of this Agreement.

4. **INSPECTIONS AND ANNUAL REPORTING.** Owner agrees to permit the periodic examination, by prior appointment, of the Historic Resource by the County Assessor, the State Board of Equalization, and the City as may be necessary to determine Owner's compliance with the terms and provisions of this Agreement. Owner agrees to provide the City with a report as to the status of the Historic Resource annually and when any improvements or changes have been made. The annual report shall provide information regarding the status of each proposed improvement, any changed conditions of the Historic Resource, and whether Owner has received any funds from other sources designated for the preservation or maintenance of the Historic Resource and from whom such funds have been received.
5. **TERM AND EFFECTIVE DATE.** The term of this contract is for a period of 10 years. The initial term of this Agreement shall be from _____ 2007 to _____ 200_. The effective date shall be _____, 2007.

6. **AUTOMATIC RENEWAL.** On each yearly anniversary of the effective date of this Agreement (hereinafter referred to as the "renewal date"), one year shall be added automatically to the initial term of this Agreement, unless notice of non-renewal is given as provided in this Agreement.
7. **NOTICE OF NONRENEWAL.** If in any year either the Owner or City desires not to renew this Agreement, that party shall serve written notice of nonrenewal on the other party in advance of the annual renewal date. Unless the notice is served by Owner to City at least 90 days, or by City to Owner at least 60 days prior to the renewal date, one year shall automatically be added to the term of the Agreement. Within 15 days of receipt by Owner of a notice of nonrenewal from the City, Owner may make a written protest. Upon receipt of such a protest the City Council shall set a hearing prior to the expiration of the renewal date of this Agreement or toll the renewal date until such hearing can reasonably be held. Owner may furnish the City Council with any information which the Owner deems relevant and shall furnish the City Council with any information it may require. At any time prior to the renewal date, City may withdraw its notice of nonrenewal.
8. **EFFECT OF NOTICE NOT TO RENEW.** If in any year either party serves notice of intent not to renew this Agreement, this Agreement shall remain in effect for the balance of the ten year term remaining since the original execution date if not yet renewed, or one year from the last renewal date of the Agreement.
9. **INDEPENDENT ADVICE of COUNSEL.** The parties hereto and each of them, represent and declare that in executing this Agreement they rely solely upon their own judgment, belief and knowledge, and the advice and recommendations of their own independently selected counsel, concerning the nature, extent, and duration of their rights and claims, and that they have not been influenced to any extent whatsoever in executing the same by any of the parties hereto or by any person representing them, or any of them.
10. **ENFORCEMENT OF AGREEMENT.** In lieu of and/or in addition to any provisions to cancel the Agreement as referenced herein, City, or any landowner in the City, may specifically enforce, or enjoin the breach of, the terms of this Agreement. In the event of a default under the provisions of this Agreement by Owner, City shall give written notice to Owner of violations of this Agreement. Said notice shall be given by registered or certified mail addressed to the address stated in this Agreement. If such violation(s) is not corrected to the reasonable satisfaction of the City within thirty (30) days after the date of the notice of violation, or within such reasonable time as may be required to cure the breach or default provided that acts to cure the breach or default are commenced within thirty (30) days and thereafter diligently pursued to completion, then City may, without further notice, declare a default under the terms of this Agreement and bring any action necessary to specifically enforce the obligations of Owner growing out of the terms of this Agreement including, but not limited to, bringing an action for specific performance or injunctive relief against the Owner or for such other relief as may be appropriate.

City does not waive any claim of default by Owner if City does not enforce or cancel this Agreement. All other remedies at law or in equity which are not otherwise provided for in this Agreement or in City's regulations governing historic properties are available to City to pursue in the event there is a breach of this Agreement. No waiver by City of any breach or default under this Agreement shall be deemed to be

a waiver of any other subsequent breach thereof or default thereunder.

11. CANCELLATION. City may cancel this Agreement if City determines Owner has breached any of the conditions or covenants of this Agreement or has allowed the Historic Resource to deteriorate to the point that it no longer meets the standards for a Historic Resource.
12. NOTICE of CANCELLATION. This Agreement cannot be canceled until after City has given notice and has held a public hearing as required by Government Code Section 50285. Notice of the hearing shall be mailed to the last known address of each owner of property within 300 feet of the Historic Resource and shall be published in accordance with Government Code Section 6061.
13. CANCELLATION FEE. If City cancels this Agreement in accordance with Section 10 above, Owner shall pay a cancellation fee of twelve and one-half percent (12-1/2%) of the *full* value of the property at the time of cancellation. The *full* value shall be determined by the County Assessor without regard to any restriction on the property imposed pursuant to this Agreement. The cancellation fee shall be paid to the county auditor at such time and in such manner as the county auditor shall prescribe.
14. NOTICES. All notices required by or provided for in the Agreement shall be given in writing and may be mailed or delivered in person at the address of the respective parties as specified below or at any other address as may be later specified by the parties. Deposit of notice in the mail, postage prepaid, shall be deemed receipt of the notice. hereto:

To City: Dev. Svs. Director
 City of Costa Mesa
 77 Fair Drive
 Costa Mesa, CA 92626

To Owner: _____

15. NO COMPENSATION. Owner shall not receive any payment from the City in consideration of the obligations imposed under this Agreement. Owner's consideration for the execution of this Agreement is the advantage that will accrue to Owner as a result of the effect upon the assessed value of the Historic Resource. City's consideration for this Agreement is the substantial public benefit to be derived therefrom.
16. REMEDY IF AGREEMENT HELD NOT ENFORCEABLE. In the event it is finally determined this Agreement does not constitute an enforceable restriction within the meaning of the applicable provisions of the California Government Code and the California Revenue and Taxation Code, except for an unenforceability arising from the cancellation or nonrenewal of this Agreement, then this Agreement shall be null and void and without further effect and the Historic Resource subject to this Agreement shall from that time be free from any restriction whatsoever under this Agreement without any payment or further act of the parties to this Agreement.
17. ACQUISITION OF PROPERTY BY EMINENT DOMAIN; CANCELLATION OF CONTRACT; INAPPLICABILITY TO DETERMINATION OF VALUE. In the event that the Historic Resource is acquired in whole or part by eminent domain or other acquisition by any entity authorized to exercise the power of eminent domain, and

the acquisition is determined by the City to frustrate the purpose of the Agreement, the Agreement shall be canceled and no fee shall be imposed under Section 12, above. The Agreement shall be deemed null and void for all purposes of determining the value of the Historic Resources acquired.

18. **EFFECT OF AGREEMENT.** None of the terms, provisions or conditions of this Agreement shall be deemed to create a partnership between the parties hereto and any of their heirs, successors or assigns, nor shall such terms, provisions or conditions cause the parties hereto to be considered joint venturers or members of any joint enterprise.
19. **INDEMNITY OF CITY.** Owner shall maintain during the life of this Agreement a homeowners insurance policy naming the City, its officers, agents and employees as additional insureds, but only with respect to claims related to direct or indirect use or operations of Owner or those of his contractor, subcontractor, agent, employee or other person acting on his behalf and which relate to the use, operation and maintenance of the Historic Resource. This provision applies to all damages and claims for damages suffered, or alleged to have been suffered, by reason of the operations referred to in this Agreement regardless of whether or not the City prepared, supplied or approved the plans, specifications or other documents for the Historic Resource.
20. **SUCCESSORS AND ASSIGNS.** This Agreement is binding upon and shall inure to the benefit of all successors in interest of the Owner. A successor in interest shall have the same rights and obligations under this Agreement as the original owner who entered into this Agreement.
21. **RECORDATION.** No later than twenty (20) days after the parties execute and enter into this Agreement, City shall cause this Agreement to be recorded in the office of the County Recorder of the County of Orange.
22. **AMENDMENTS.** This Agreement may be amended, in whole or in part, only by a written and recorded instrument executed by the parties hereto.

IN WITNESS WHEREOF, the parties to this Agreement have caused their names to be affixed hereto on the day and year first written above.

CITY:

OWNER:

Donald D. Lamm
Deputy City Mgr./Dev.Svs.Director

EXHIBIT "A"

HISTORIC PROPERTY LEGAL DESCRIPTION

(To be provided for each specific property.)

EXHIBIT "B"

SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION

1. Every reasonable effort shall be made to provide a compatible use for a property which requires a minimal alteration of the building structure, or site and its environment, or to use a property for its originally intended purpose.
2. The distinguishing original qualities or character of a building, structure, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
3. All buildings, structures, and sites shall be recognized as products of their own time.
4. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.
5. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
6. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure or site shall be treated with sensitivity.
7. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
8. The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.
9. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, scale, color, material and character of the property, neighborhood or environment.
10. Wherever possible, new additions or alterations to structures shall be done in such a manner that, if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

EXHIBIT "C"

CITY OF COSTA MESA HISTORIC RESOURCE MAINTENANCE STANDARDS

All buildings, structures, yards and other improvements shall be maintained in a manner which does not detract from the appearance of the immediate neighborhood. The following conditions are prohibited:

1. Dilapidated, deteriorating, or unrepaired structures, such as: fences, roofs, doors, walls, and windows.
2. Publicly visible storage of scrap lumber, junk, trash, or debris.
3. Publicly visible storage of abandoned, discarded, or unused objects or equipment, such as automobiles, automobile parts, furniture, stoves, refrigerators, cans, containers, or similar items.
4. Stagnant water or excavations, including pools or spas. Any device, decoration, design, structure, or vegetation which is unsightly by reason of its height, condition, or its inappropriate location.